

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2124 OF 2005

Kach Karkhana Zopadi Rahivasi Seva  
Sangh

.. Petitioner

V/s

Kach Karkhana Cooperative Housing  
Society & Ors.

.. Respondents

Ms.Seema Sarnaik with Mr.S.P. Khopade for the  
Petitioner.

Mr.S.K. Talsania for Respondent No.1.

Mr.C.U. Singh for Respondent No.2.

Ms.Aruna Savla for Respondent No.3.

Mr.More, A.G.P. for Respondent No.4.

CORAM : H.L. GOKHALE & ABHAY S. OKA, JJ.

DATE : 8TH FEBRUARY 2006

**P.C. :**

1. Heard the counsel for the parties.

2. The petition seeks to challenge the decision of the Assistant Municipal Commissioner, F-North dated 21st February 2005 whereunder he has declined to accept the case of the 20 persons represented by the Petitioner for being considered as tenants and for being accommodated

in the Development Scheme that the Municipal Corporation has taken out on a plot of land situated at G.D. Ambekar Marg, Wadala, Mumbai. The scheme is developed on a land wherein a chawl by name Kach Karkana Chawl was situated and the land is owned by the Municipal Corporation. Since it became dilapidated, the Municipal Corporation proceeded to develop it under the Development Control Regulation No.33(7). The building meant for the permanent accommodation of the tenants is now ready. The erstwhile building had 92 tenants and the new building will accommodate those 92 tenants.

3. Ms.Sarnaik for the Petitioner submits that these twenty persons were residing in the very property as encroachers prior to 1991 and showed some documents in support which include the caveat filed by the Municipal Corporation in the event these occupants take any steps to protect their possession and the letter by the Encroachment Officer issued on 21st May 1998 stating that those who are on the voters list prior to January 1995 will be protected in the Slum Rehabilitation Scheme. It is her further case that the Municipal Corporation acquired this land for the Slum Improvement Scheme and, therefore, in the redevelopment project these 20 persons ought to be accommodated. She draws our attention to the suit which was filed earlier and various orders passed in the Appeal from Order arising

therefrom.

4. Mr.Talsania pointed out that although the Petitioner is contending that this scheme should be considered as a Slum Rehabilitation Scheme under D.C. Regulation 33(10), when an appeal from order was heard before a Single Judge earlier, they applied for deletion of the Slum Rehabilitation Authority which goes contrary to their submission. The deletion was granted by a learned Single Judge by her order dated 18th December 2003.

5. The fact however remains that in the appeal proceedings, certain consent terms were drawn between the occupants and the developer of the property whereunder certain amounts were agreed to be paid to these 20 occupants for shifting to a temporary alternative accommodation. The case of Ms.Sarnaik is that under those consent terms what was agreed was to receive certain amounts for temporary alternative accommodation and the persons concerned had to be accommodated when the building was finally ready. It is therefore that the subsequent decision of the Assistant Municipal Commissioner dated 21st February 2005 holding these 20 occupants to be non-eligible has been challenged. An interim prayer is also sought that 20 tenements be retained from the building which is ready.

6. Reply and the rejoinder have been filed by the parties. It has been pointed out by the Municipal Corporation that the scheme has been developed under D.C. Regulation 33(7) and the 20 claimants are the persons who have encroached when the buildings were dilapidated and various people shifted from time to time. It is also pointed out that the persons who are claiming are relatives of those who are being accommodated. An affidavit has been filed by one Malhari Kalappa Manchekar, President of the 1st Respondent Society, to whose affidavit the list of 92 allottees is annexed and it is also shown as to how 18 of these 20 claimants are related to the families of these allottees. Two of them of course are stated to be outright encroachers. It is therefore submitted that this is a scheme under D.C. Regulation 33(7) and merely because certain payments were made for alternative arrangement, there is no question of giving any accommodation in the building which is finally ready.

7. We have considered the submissions of both the parties. The fact remains that the concerned plot of land is developed under D.C. Regulation 33(7). This being so, the 20 persons who claim to be occupants of the concerned plot, at the highest, can claim as project affected persons and on that footing they may represent

to the Municipal Corporation. If the authorities of the Municipal Corporation accept them as project affected persons, they may have some claim for rehabilitation elsewhere. The present allotment to the 92 allottees cannot be halted nor can any fault be found with the decision of the Assistant Municipal Commissioner. Petition is rejected.

(H.L. GOKHALE, J.)

(ABHAY S. OKA, J.)